

No. 12013

IN THE

# United States Court of Appeals

FOR THE NINTH CIRCUIT

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JOSEPH BARSOCK,

*Appellant and Defendant,*

*vs.*

UNITED STATES OF AMERICA,

*Respondent and Plaintiff.*

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APPELLANT'S REPLY BRIEF.

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CARYL WARNER,

639 South Spring Street, Los Angeles 14,

JOSEPH STONE,

301 Jewelers Exchange Building, Los Angeles 14,

*Attorneys for Appellant.*

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PAUL P. O'BRIEN,



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## APPELLANT'S REPLY BRIEF.

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Appellant sought in the opening brief to present only those cogent reasons based upon various rights which since time immemorial have been accorded to all citizens under the common law. Among these is the right of an individual to be free from unlawful interference with his liberty. Arrests may be made as previously indicated, only under specific circumstances, and then only by certain persons as the situation may point out.

In the instant case it has been deemed by Appellant that the view of the Trial Court and discussions by Appellee in its brief overlook completely the fact that it is highly material whether or not the arrest or detention of any person was lawful or unlawful. As pointed out by the Appellant, the Courts have consistently held to the thought that various offenses committed by a person unlawfully restrained flowing from said unlawful restraint are to be

regarded in a different light than if those same offenses were committed under circumstances other than that of an unlawful restraint.

It is admitted that the arrest of Appellant was made after Appellant was off the Naval Base and not on the Naval Reservation. It flows from this that the entire reserve training program of the armed forces of the United States could be jeopardized in view of the fact that any reserve personnel wearing uniforms in connection with drills might be picked up within a Naval Reservation or off a Naval Reservation by Naval personnel without cause and unlawfully for trivial reasons.

It was for this reason that the Respondent sought to include Count II in its indictment. It will be noted that the Trial Court sustained a motion by Appellant to dismiss said Count II after the full presentation of all evidence; said Count II referred to an alleged killing committed while Appellant was allegedly perpetrating a robbery since Appellee well knew that there could be no basis for arresting of Naval personnel, especially off a Naval Reservation, except perhaps under such circumstances as were alleged to have been committed under Count II of the indictment.

Appellant feels that he has thoroughly presented in his opening brief the issues involved and reasons in support of Appellant's various contentions. Appellant contends that Respondent's Brief, while learned and certainly representative of a great deal of admirable intellectual effort, fails to meet Appellant's contentions especially as regards the point with regard to the instructions to the jury so far as evidence to be considered in connection with whether the arrest and detention of defendant was lawful or unlawful.

As a matter of fact, the efforts of Respondent to seek to establish the point that the arrest and temporary detention was lawful is of little relevance where the Court has, by its instructions, wrongfully made this issue immaterial. That a citizen may be estopped to assert his constitutional rights is ridiculous.

But even over and beyond these points there are further basic factors which Appellant is sure merit the attention of this Honorable Court and Appellant does herewith solicit this Court's attention to these points.

Firstly: In our system of civilization and especially in the United States of America, the dignity and worth of every individual and his equality with every other individual, is theoretically protected by appropriate Constitutional provisions and are generally assumed to be true. However, it would seem readily apparent to all who are aware of the vastly complex nature of our social structure and the tremendous problems of our times that there are some who have lesser opportunities and cannot act at all times with that complete freedom with which every citizen is supposedly invested.

And, unfortunately, this means that certain individuals in our country do not receive adequate environmental background nor sufficient education to prepare them for so many of the problems which even well adjusted and integrated persons meet often only with great difficulty.

Reference is made here specifically to the fact that Appellant is a Negro. At this point Appellant thanks

both the Trial Court and all persons and witnesses engaged in the trial of this matter for having acted toward him at all times with courtesy, fairness and with fullest recognition of all Appellant's rights. However, Appellant, as pointed out in his examination before the Court, was born in a poor section of the South into a family in which the home was subsequently broken up. His education was limited and not even by our standards, rudimentary. Then along comes the war and his participation therein as a Steward's Mate in which he had little additional opportunity to develop the concept of the dignity of man.

In the light of these basic thoughts concerning the character and background of Appellant and in the light of testimony adduced, it is inconceivable that Appellant could have acted from the motives requisite to sustain the verdict brought in by the jury.

When further consideration is given to the fact that the only witness whose testimony is at all relevant, namely, Ballard, was himself another of the products of these troublous times, inexperienced both as to handling of that deadly weapon which was entrusted to his care and as to the nature of punishments which might be inflicted upon him for his having been derelict in his duty, it would again seem inconceivable that Appellant could have acted from the requisite motives.

It is not the number of witnesses but the quality of the testimony that in the last analysis justifies any particular finding. It is comparatively simple to take diverse threads of evidence and weave therefrom a coherent pattern of

evil motives as was done by Respondent with its many, many witnesses. Yet, stripped to its essentials, no witness was in the position to know exactly what happened except the lad Ballard, frightened, uncertain and by the time of trial fairly convinced that everything to which he testified was exactly as it occurred in that uncertain, breathless, unhappy moment.

Appellant contends, therefore, even in accordance with Respondent's views as set forth in its brief on Point 3 that a miscarriage of justice has resulted in the instant case.

There was no effort on the part of Appellant at that time to deny the basic facts of the shooting. It is only with his state of mind that we are properly concerned, for hinging thereon assuredly lies the true verdict.

Philosophers, psychiatrists, metaphysicians and various and sundry scientists and pseudo-scientists as well as lawyers have struggled in vain to know precisely exactly what the "intention" of a party was with regard to any particular transaction. To find as was done here that Appellant acted from the vicious motives attributed to him in the light of the specific testimony of the lad Ballard, seems to be a miscarriage of justice.

The every action of Appellant subsequent to the alleged shooting points to a confused, scared individual, acting primarily from stupidity in breaking a car window with the butt of a gun which can go off from lesser shocks and lastly, falling asleep in, of all places, a naval vessel.

### Conclusions.

1. There was a reversible error committed by the Trial Court as to instructions given to the jury by the Court, for the legality of the arrest went to the matter of degree. No estoppel was involved.

2. The verdict of the jury was in view of all the factors surrounding the character of the pertinent witnesses and evidence presented, was clearly wrong as to the degree of the crime, representing therefore a miscarriage of justice. The judgment should therefore be reversed and such action taken as to this Honorable Court seems properly consistent with the record and briefs filed therefrom.

Respectfully submitted,

CARYL WARNER and

JOSEPH STONE,

By JOSEPH STONE,

*Attorneys for Appellant.*